

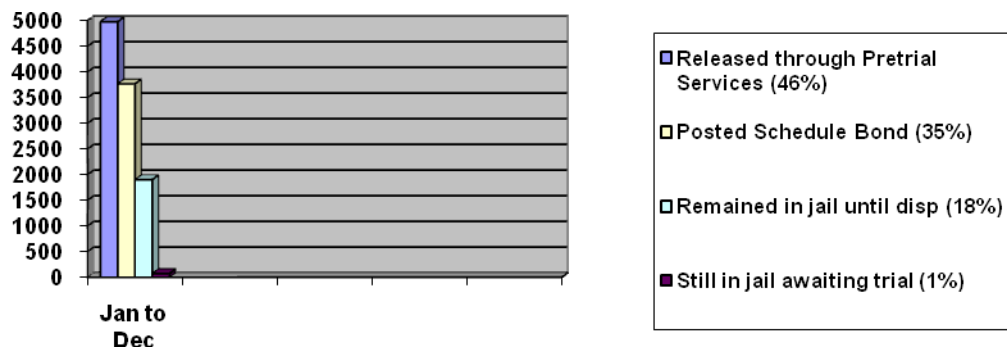
# **Amended Executive Summary**

## ***Uniform Schedule of Bail Pilot Project Report for 2010 Year End Report Findings and Recommendations***

### **Findings and Recommendations**

In the pilot counties from January 1, 2010 through December 31, 2010 there were a total of 37,573 arrests in which 22,560 defendants obtained some form of pretrial release (60%). There were 4,861 cases for non-payment of fines (13%) and 10,716 cases in which the defendant was eligible to post a pilot uniform schedule of bail amount (29% of all arrests). Of these, 3,767 people posted the schedule bond (35%), 4,977 obtained release through Pretrial Services (46%), 71 were still in jail awaiting trial as of December 31, 2010 (1%) and 1,901 defendants never obtained a pretrial release and were held in jail until their case was disposed (18%).

#### ***Outcomes for cases eligible under the schedule Jan 1 through December 31***



#### ***Pretrial Incarceration Time***

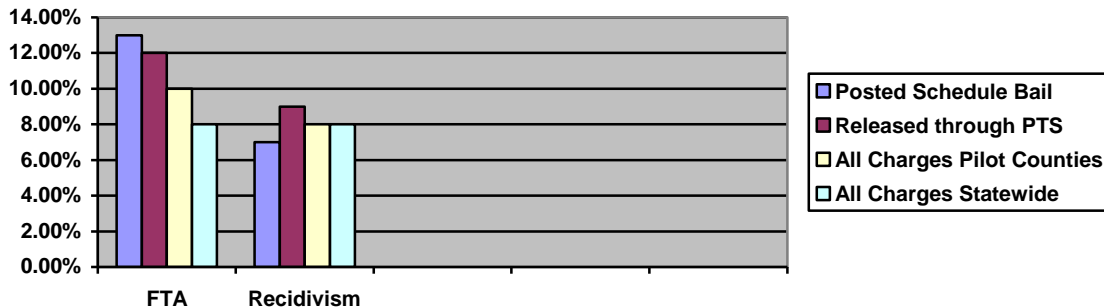
Between January 1, 2010 and December 31, 2010 the average time it took for a defendant to obtain a pretrial release in the nine pilot counties was 100 hours. For charges under the schedule, the average time was 35 hours. For defendants who posted a bond under the schedule the average time was four hours.

#### ***Pretrial Failure Rates***

In the pilot counties from January 1, 2010 through December 31, 2010 the FTA rate for defendants who posted a uniform schedule of bail was 13% (490 defendants failed to appear). The FTA rate for defendants who were charged with an offense on the uniform schedule but were released through Pretrial Services instead of posting the schedule bail was 12% (597). The recidivism rate for those posting a schedule bail

amount was 7% and for those released through pretrial services the recidivism rate was 9%. The FTA rate for all charges in the pilot counties for the same period was 10% and the recidivism rate was 8%. The statewide FTA rate for the same period was 8% and the recidivism rate was also 8%.

**Pretrial failure rates January 1<sup>st</sup> through December 31<sup>st</sup>**



**Pretrial Services Investigation Data**

When a defendant posts a uniform schedule of bail, pretrial services does not interview him or her nor is an investigation or risk assessment conducted. The risk levels of the 4,977 defendants who were eligible to post the uniform schedule but were interviewed by and obtained a release through pretrial services instead, since January 1<sup>st</sup> are as follows:

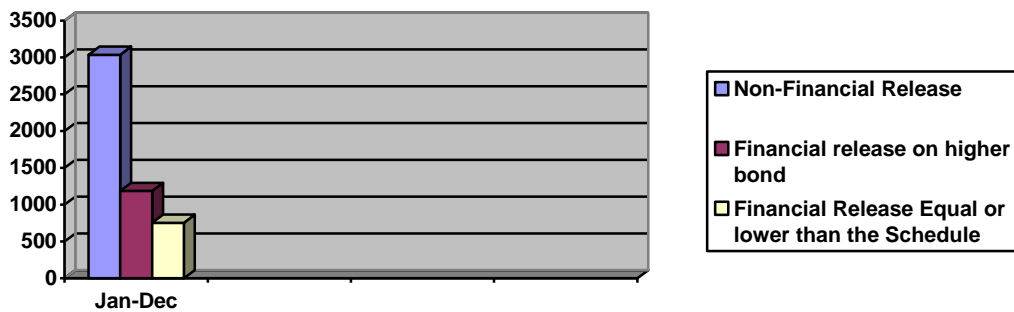
**PRETRIAL SERVICES INVESTIGATION DATA**

Risk Level	Number of Defendants Released
Low Risk	2211
Moderate Risk	1020
No Risk Determined (Def. Not Verified)	933
No Risk Determined (Def. Ineligible*)	613
High Risk	200

\*Ineligible: Defendant refused to be interviewed by pretrial or defendant is homeless

In some cases, once the defendant was presented to a Judge, the bond amount was raised based on the defendant's risk level and criminal history. Of the 4,977 defendants eligible under the schedule that were interviewed by Pretrial Services, 1,187 defendants had their bond raised (24%). There were 3,035 defendants released on recognizance, unsecured or a surety bond (61%) and 755 defendants who were released on a financial bond that was equal to or lower than the schedule amount (15%). As shown in the above table, there were 1,746 defendants interviewed that were either ineligible for release, not verified or assessed as high risk. These numbers appear to be consistent with the number of defendants in which the schedule bail amount was raised after judicial review. Likewise, there were 3,231 defendants assessed as low or moderate risk which is also consistent with the number of defendants released on non-financial conditions.

### ***Type of release for defendants after Pretrial Services investigation***



### ***Cost Savings to the Counties***

When estimating cost savings to the local jails it is beneficial to look at the average time it takes for a defendant to obtain a pretrial release and multiply this by the daily housing cost. For estimation purposes, the average rate of \$30 per day will be used. For those defendants who could afford to and did post bail under the schedule, the average release time was *four hours*. For those defendants who were qualified for bond under the schedule, but could not afford it, the average release time was *35 hours*. The average for all arrests however, was *100 hours*. Thus, absent the schedule, it appears the average release time for “all arrests” more appropriately represents the potential savings time by which to assess the actual savings of the pilot counties. At \$30 per day this equals \$1.25 per hour. Since the pilot program began on January 1, 2010, 3,757 defendants posted a scheduled bail; therefore, the cost savings to the local jails in the nine pilot counties can be estimated at \$417,307.

When attempting to estimate cost savings on a statewide level, it is difficult to estimate how many defendants would have the money to post the schedule bail and how many would be released through Pretrial Services. One way to attempt estimation is to calculate release rates based on the percentage data from the pilot counties. The data in the pilot counties has shown that 29% of all arrests were considered eligible under the schedule. Of these, 35% posted a schedule bail amount. In calendar year 2010, there were 264,450 arrests statewide with 64% of defendants obtaining pretrial release.

Jefferson County is the only pretrial program in the state that operates 24/7 and the staff contacts the judges and trial commissioners for pretrial release decisions every two to four hours. Therefore, very few defendants post pre-set bail amounts there and, with the volume of arrests in Jefferson County, it often takes anywhere from four to eight hours for a defendant to be released from the jail after bail has been posted or release on recognizance has been authorized by the judge. Thus, a review of the 10,711 schedule-qualified defendants arrested in Jefferson County in 2010 shows an average release time of 27 hours. The “all arrests” time was 49 hours. During calendar year 2010, there were 51,335 arrests in Jefferson County (19% of all arrests statewide) with

70% of defendants obtaining pretrial release. Of these only 250 defendants posted a pre-set bail amount (Less than 1%).

When applying the pilot percentages to the statewide arrest caseload, absent Jefferson County, it can be estimated that approximately 61,000 cases would be eligible under the schedule and 21,000 possibly posting a scheduled bail. Therefore a rough estimate of total jail costs savings if the Uniform Schedule was utilized statewide can be calculated at approximately \$2,000,000. Fayette County has the second highest arrest caseload in the state with 19,909 cases and an average release time of 97 hours. The potential savings in Fayette County alone can be estimated at over \$200,000. If Jefferson County is included the savings can be estimated to increase to \$3.3 million. Thus, in ten years, the savings could amount to \$33 million statewide for local governments.

During the pilot project, each county was given the flexibility to vary their programs based on local factors. Boone County chose to maintain their previous schedule to incorporate some misdemeanor crimes under KRS chapter 508 and deviated from the mandatory eight hour hold on Schedule DUI cases. Kenton, Campbell and Bell counties also deviated from the Schedule's eight hour hold on DUI cases. Campbell County Circuit judges chose not to include any felony charges. In Pike, Kenton, Bell and Campbell counties the judges requested that bail amounts be non-cumulative when defendants were arrested on five or less charges. These counties chose to allow the highest bail amount be posted as a "blanket bond" for all charges. Jail staff in Pike, Kenton and Campbell counties consistently applied this deviation, however, Bell County did not. In two of the counties that chose to deviate from the eight hour DUI hold, the data shows a significant difference in average release times. The average release time in Boone and Kenton counties was nine hours versus 61 hours for the remaining seven counties.

Overall, the bail schedule has resulted in some time savings for Pretrial Services. Although pretrial officers do not conduct an interview when a defendant posts a bond under the schedule, they are still responsible for entering the information into our case management system, performing record checks for court, completing the AOI at the defendant's first court appearance and tracking failure to appear and recidivism rates. The interview part of the pretrial process takes on average 12 minutes per defendant. The total time "saved" during the past year was 753 hours in all nine counties combined. In Butler County only five hours were saved during the past year since only 24 defendants were able to post the schedule bail. On the other hand, in Kenton County, with 1,350 defendants posting the schedule bail, 270 hours were saved last year (23 hours per month). Extrapolating these figures to all 120 counties, this could amount to a figure as high as 10,039 hours saved per year for pretrial to devote to other needy areas, such as monitored conditional release, etc. However, if specific charges such as DUI and public intoxication are excluded from the schedule the savings will be impacted. The elimination of these charges could result in a 5% to 10% reduction in schedule eligible cases, thus decreasing the savings.

## **Conclusion**

When discussing the concept of bail schedules in general, pretrial practitioners, judges and the public are split philosophically. Advocates for bail schedules cite the positive aspects such as monetary and time savings for pretrial staff, a faster release from jail and a higher percentage of releases overall. Those opposed to bail schedules cite the negative aspects such as risk to public safety due to the lack of a risk assessment being conducted, limited judicial discretion in bail decisions, a step away from the use of evidence based practices and unfairness to the poor.<sup>1</sup>

For the specific charges eligible under the schedule, release rates were increased substantially in all nine counties. Furthermore, defendants who had the funds to post the scheduled bail were released on average, within four hours of arrest. The quicker release time has a positive impact on jail staff and reduces the number of defendants Pretrial Services must investigate. Costs are saved to both the jail and Pretrial Services.

The data has also shown that in high poverty counties very few defendants are able to post the schedule bail amount—this may be because of the Schedule's cumulative nature in establishing bail. Therefore the schedule has not had an impact in these counties. Furthermore, with the exception of Boyd County, total jail pretrial populations have remained consistent throughout the year. One could argue the variances in release rates and types of releases across jurisdictions can be attributed mainly to judicial discretion in bail setting and the effectiveness of the Pretrial Services program.

In terms of pretrial justice overall, Kentucky has a more equitable system of pretrial release than most states; however, improvements can still be made. The statutes and rules pertaining to pretrial release require judges to release defendants on appropriate conditions to ensure appearance in court and lessen the risk of future criminal conduct. Following the trend of criminal justice agencies nationwide, Pretrial Services utilizes a researched based validated risk assessment tool that measures both a defendant's flight risk and risk of anticipated criminal conduct. The tool assists pretrial officers in making recommendations to the trial courts on those defendants who can be safely released into the community. The system falls short when faced with those defendants who are high risk and pose a threat to community safety. Kentucky does not have a preventive detention statute. Judges in Kentucky must set bail on all cases with the exception of capital cases. Both the American Bar Association Standards on Pretrial Release and the National Association of Pretrial Services Standards recommend that

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<sup>1</sup> Keep in mind, however, that any judge can go below the Schedule without documenting his reasons, yet, if he or she exceeds the Schedule, the reasons need to be recorded. Moreover, recidivism was lower on Schedule-released defendants than those released via pretrial services. As to FTA's, it was 490 FTA's (out of 3767), or 13%, for Schedule released defendants, versus 597 (out of 4977), or 12%, for those qualified under the Schedule, but released through pretrial.

financial bail should not be used to prevent a defendant from being released. Detention hearings should be held to ensure a fair and just system. Although most defendants can be safely released into the community, there are some defendants who pose a threat so great that there is no condition or set of conditions that could mitigate that risk. Unfortunately, in Kentucky, Judges cannot hold high risk defendants without bail; therefore they must resort to high financial bail as a means of preventive detention.

## **Recommendations**

- The Uniform Schedule of Bail should be mandated statewide and each jurisdiction should have the authority to adopt the terms of the schedule.
- RCr 4.00, etc. should be reviewed and amended to reflect the proposed pilot Uniform Schedule of Bail.
- In order for a jurisdiction to utilize all components of the schedule all stakeholders should be in agreement.

***The Uniform Schedule of Bail should be mandated statewide and each jurisdiction should have the ability, within limits, to define the terms of the Schedule.***

Each jurisdiction should have the opportunity to utilize a bail schedule.<sup>2</sup> How the schedule is used, what charges are incorporated in the schedule and whether or not a risk assessment is conducted should be decided at the local level within parameters established by the Supreme Court of Kentucky. That being said, local variances should not significantly change the Schedule. Bail amounts should not exceed those on the schedule without documentation as to why. One of the major flaws (or benefits) of the bail schedule is the absence of a pretrial investigation and risk assessment.

Some jurisdictions may want a bail schedule with this process included while others may focus on the fact that this type of implementation significantly diminishes the

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<sup>2</sup> KRS 431.540 reads:

The Supreme Court may by rule or order prescribe a uniform schedule of amounts of bail in designated nonviolent Class D felonies, misdemeanors, and violations;

(1) Except as provided in subsection (2) of this section, when the amount of bail is fixed by such rule or order of the Supreme Court for a particular offense, the clerk of the court or other public officers so authorized by the court's order shall accept cash bail in the prescribed amount or the deposit authorized by KRS 431.530 and release the defendant to appear in accordance with the conditions of the bail bond. A receipt shall be delivered to the defendant for the bail so taken and within a reasonable time such bail shall be deposited with the clerk of the court having jurisdiction of the offense.

(2) A court may, in the exercise of its reasonable discretion, refuse to set bail in the amount prescribed by such rule or order of the Supreme Court, but, in so doing, the court must set forth in writing its reasons for such refusal.

projected savings in dollars and pretrial release times, which is generated only if the Schedule can be implemented by the jail as soon as practical after a defendant's appearance there. This average time under the Bail Schedule was four hours versus 35 hours for pretrial release of defendants otherwise qualified under the Schedule and 100 hours for "all arrests." Others might feel that an early release under the Schedule properly reflects the non-violent and mostly minor types of offenses contained in the Schedule. The only felonies included in the Schedule are first offense class D's involving theft or related matters, with one exception for "energy transfer devices."

In order to provide for a more fair and equitable system of release, some jurisdictions may choose to allow release on recognizance or an unsecured bail bond for defendants charged with offenses under the schedule that are investigated and assessed as low risk without judicial review. For defendants assessed as moderate to high risk, some would argue judicial review should be required. However, given the types of offenses covered by the Schedule and the savings potential, mandating pretrial review was rejected under the Pilot Program.

This approach (conducting pretrial assessments of all Schedule-qualified defendants before release) would not create any time savings for Pretrial Services; however, the risk to the public would be substantially decreased since all defendants would undergo an investigation prior to release. We would, however, see some cost savings for the local jails, especially in those areas where judicial bail setting practices tend to be financially based instead of risk based or in areas of high poverty.

When all officials agree to utilize a bail schedule and determine the charges and types of releases authorized, it should be required that judges refrain from raising the bail amounts without just cause. Judicial decisions to raise bail amounts for the purposes of preventing release should be based on a defendant's risk to public safety and likeliness for absconding. Furthermore, when a bail amount for a charge under the schedule is raised after judicial review, the reasons should be recorded.

The data has consistently shown that release rates are substantially lower under the schedule in counties where poverty rates are high. For some defendants, posting even a \$100 bail is out of his or her reach. When you add the jail processing fees, clerk's fee and bond fee the \$100 bail can be as high at \$169.<sup>3</sup> Defendant's who are

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<sup>3</sup> KRS 441.265(2)(a) The jailer may adopt, with the approval of the county's governing body, a prisoner fee and expense reimbursement policy, which may include, but not be limited to, the following:

1, An administrative processing or booking fee.

KRS 64.0005(1) The clerks of the Supreme Court, the Court of Appeals, and the Circuit Courts shall collect a fee of twenty-five dollars (\$25) for taking or filing any bond or release on recognizance.

KRS 431.5305. With the approval of the fiscal court of the county in which the prisoner is incarcerated, the jailer may prepare or accept a bail bond pursuant to KRS 30A.060(3). In this case, he shall collect a fee of five dollars (\$5) from the defendant. The jailer shall furnish the defendant with a written receipt for the fee. By the tenth day of each month, the jailer shall:

(1) Report the previous month's bonding fees to the county treasurer; and

(2) Submit the previous month's bonding fees to the county treasurer for inclusion in the jail fund.

disabled or unemployed simply cannot afford to post bail, therefore in order to create an equitable system when utilizing a bail schedule, local jurisdictions must have the flexibility to allow for non-financial release under the schedule. As stated earlier, some jurisdictions may choose to incorporate the pretrial risk assessment with the schedule to minimize risk to the public and ensure appearance in court, others may not.

***RCr 4.00, etc. should be reviewed and amended to reflect the proposed pilot Uniform Schedule of Bail***

RCr 4.20 permits the use of the Uniform Schedule of Bail, however, it (and other supporting rules) needs to be amended to reflect the pilot eligible charges and bail amounts.<sup>4</sup>

***In order for a jurisdiction to utilize the schedule all stakeholders should be in agreement.***

As noted, upon agreement, current statutes allow for jailers to accept bail monies and receive a fee for processing the bail.<sup>5</sup> In summary, each county, with the concurrence of the Chief Circuit Judge, should have the option of determining how it wants to implement its Schedule.

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<sup>4</sup> RCr 4.20(1).

<sup>5</sup> KRS 30A.060(3) The clerk shall prepare bail bonds as required by subsection (1) of this section; however, additional public officials and their employees shall be authorized by rule or order of the Chief Circuit Judge to prepare and accept bail bonds to be taken by the clerk or for his court. Such bail bonds shall have the same validity as if prepared or taken by the clerk.

RCr 4.24. When the amount of bail has been fixed either by the court or by the uniform schedule of bail, it may be taken by the clerk of the court in which the defendant is held to appear. Another bonded public officer shall be authorized by the chief judge of the circuit court to take bail. The authorized bonded public officer shall take bail when the clerk of the court is unavailable. The individual with whom deposits are made shall ascertain that the amount deposited is no less than the amount fixed by the court.

KRS 431.5305.